



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
[REDACTED])	ADP Case No. 15-01129
)	
Applicant for Public Trust Position)	

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

06/01/2016

Decision

HESS, Stephanie C., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations.) Applicant has not paid or otherwise addressed any of her delinquent debts. Eligibility for access to sensitive information is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on February 28, 2014. On September 21, 2015, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), citing trustworthiness concerns under Guideline F. The DOD acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant received the SOR, submitted her Answer on October 23, 2015, and requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on November 25, 2015. A complete copy of the file of

relevant material (FORM), which included Government Exhibits (GX) 1 through 7, was sent to Applicant on December 14, 2015. She was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on November 10, 2015, and did not respond¹. The case was assigned to me on May 2, 2016.

Findings of Fact

The SOR alleges 16 delinquent debts totaling approximately \$58,161. These debts are comprised of: a 2008 federal tax lien for \$25,462; a 2007 judgment and a 2009 judgment totaling \$21,158; three returned checks totaling \$1,115; four medical debts totaling \$1,163; a debt to an apartment complex for \$4,446; three consumer debts totaling \$3,729; and, two cable bills totaling \$1,086. In her Answer, Applicant admitted SOR ¶¶ 1.c, 1.e, 1.f, 1.h, 1.k, 1.n, and 1.o, including the tax lien, which total \$33,108. She denied SOR ¶¶ 1.a, 1.b, 1.g, 1.i, 1.j, 1.l, 1.m, and 1.p, which total \$25,053. Her admissions are incorporated in my findings of fact.

Applicant is a 58-year-old employee of defense contractor for which she has worked since January 2014. She took college courses in 1990 to 1991 and also from 2006 until 2007. She was divorced in 2002, remarried, and divorced again in 2008. She was unemployed between November 2011 and February 2012. This is her first application for a position of trust through DOD. (GX 3.)

The debts alleged in SOR ¶¶ 1.e, 1.g., 1.i through 1.l, 1.o, and 1.p are listed on the August 2015 credit bureau report (CBR). The debts alleged in SOR ¶¶ 1.a through 1.l are listed on the November 2014 CBR. She discussed many of the SOR accounts during her Personal Subject Interview (PSI) on April 1, 2014. (GX 3; GX 4.)

In her PSI, Applicant states that the 2008 federal tax lien is the result of her ex-husband's failure to pay sufficient taxes for 2004 through 2006, and that the tax lien is his responsibility. (GX 4.) However, she admits this debt in her Answer, the lien appears on each of her three CBRs, and she did not provide any evidence supporting her claim that the lien is her ex-husband's responsibility.

The delinquent debts alleged in the SOR were incurred between 2007 and 2015. Applicant did not offer any explanation concerning the debts in her Answer, nor is there any record evidence that she has taken any actions to pay, dispute, or otherwise resolve her debts.

Policies

Positions designated as ADP I and ADP II are classified as "sensitive positions." Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3. The standard that must be met for

¹ The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated December 14, 2015, and Applicant's receipt is dated December 24, 2015. The DOHA transmittal letter informed Applicant that she had 30 days after his receipt to submit information. The DOHA transmittal letter and receipt are marked as Administrative Exhibit 1.

assignment to sensitive duties is that the person's loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is "clearly consistent with the interests of national security." Regulation ¶ C6.1.1.1. Department of Defense contractor personnel are entitled to the procedural protections in the Directive before any final unfavorable access determination may be made. Regulation ¶ C8.2.1.

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security. The Government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for a public trust position.

Analysis

Guideline F, Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise [sensitive] information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding [sensitive] information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by the record evidence, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

While some of Applicant's financial difficulties may have been the result of circumstances largely beyond her control, such as her 2008 divorce and/or her period of unemployment between November 2011 to February 2012, there is no indication that she acted responsibly under the circumstances. Therefore, AG ¶ 20(b) does not apply. There is nothing in the record that explains her recently incurred debts, nor does Applicant provide any explanation for her failure to resolve or otherwise address any of her delinquent debts. None of the other mitigating conditions under this guideline are applicable.

Although Applicant denied nine of the debts, she did not provide any explanation or evidence in support of these denials. Each of the SOR debts is established by the CBRs, thus, the Government has made its *prima facie* case as to all of the SOR allegations. Applicant has failed to meet her burden of proof of mitigation.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a position of trust must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a position of trust by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

I have incorporated my comments under Guideline F in my whole-person analysis and I have considered the factors in AG ¶ 2(a). After weighing the disqualifying

and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the trustworthiness concerns raised by her delinquent debts. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to sensitive information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a – 1.p: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Stephanie C. Hess
Administrative Judge